

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

5:92-CR-35

ROBERT LAWRENCE, also known as  
Robert Julian, also known as "Bam Bam,"

Petitioner–Defendant.  
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APPEARANCES:

HON. RICHARD S. HARTUNIAN  
United States Attorney for the  
Northern District of New York  
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HON. LISA PEEBLES  
Federal Public Defender for the  
Districts of Northern New York and Vermont  
Attorney for Petitioner–Defendant  
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Albany, NY 12207

DAVID N. HURD  
United States District Judge

OF COUNSEL:

JOHN G. DUNCAN, ESQ.  
Ass't United States Attorney

LISA A. PEEBLES, ESQ.  
Federal Public Defender

PAUL J. EVANGELISTA, ESQ.  
First Ass't Federal Public Defender

**ORDER**

Following a jury trial, petitioner Robert Lawrence ("petitioner" or "Lawrence") was convicted on February 25, 1993, of all four counts with which he was charged in an eight-count indictment. Specifically, Lawrence was found guilty of conspiracy to possess with intent to distribute and to distribute cocaine ("Count 1"), first degree murder ("Count 6"), murdering a federal law enforcement officer in furtherance of a drug conspiracy ("Count 7"),

and use of a firearm in relation to a drug trafficking crime ("Count 8"). These charges stemmed from petitioner's involvement in a drug trafficking conspiracy and the October 30, 1990, murder of Agent Wallie Howard, Jr., a Syracuse Police Officer assigned to the DEA's Central New York Drug Enforcement Task Force. Lawrence was sixteen-years-old when he committed these crimes.

On May 28, 1993, Lawrence was sentenced by Hon. Neal P. McCurn, United States District Judge, to a term of imprisonment of life plus five years without the possibility of parole. Specifically, he was sentenced to concurrent life sentences on Counts 1, 6, and 7, and a term of five years on Count 8, to be served consecutively. Pursuant to the applicable law at the time of petitioner's sentencing, Judge McCurn was statutorily required to impose a sentence of life without the possibility of parole as a result of petitioner's conviction on Counts 1, 6, and 7.

On June 25, 2012, the United States Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Miller v. Alabama, \_\_ U.S. \_\_, 132 S. Ct. 2455, 2460 (2012). Although Miller does not prohibit a sentence of life without the possibility of parole for a juvenile offender, it mandates that a sentencing judge must be able to at least consider mitigating factors when determining whether such a punishment is appropriate. Id. at 2466.

The parties agree that the rule announced in Miller is substantive and retroactively applicable under the principles of Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060 (1989). The Government concedes that the mandatory life sentences without the possibility of parole given to Lawrence on Counts 1, 6, and 7 violate the holding of Miller and agrees that a new

sentencing hearing on those counts is warranted.

Therefore, it is

ORDERED that

1. Defendant Robert Lawrence's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 is (ECF No. 293) is GRANTED;

2. The probation department is directed to prepare and file an updated Presentence Investigation Report;

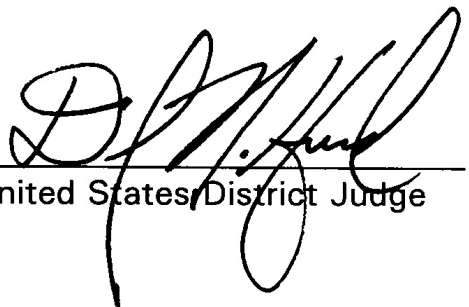
3. The parties shall file their respective sentencing memoranda, if any, on or before November 1, 2013;

4. Defendant shall be re-sentenced on Friday, November 15, 2013, at 11:00 a.m. in Utica, New York; and

5. The United States Attorney is hereby directed to submit and file the appropriate writ for the production of the defendant at sentencing on November 15, 2013.

IT IS SO ORDERED.

Dated: July 10, 2013  
Utica, New York.

  
United States District Judge